APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,040	10/15/2001	Henry C. Lee	017750-418	1549

7590   09/12/2006

Patrick C. Keane
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

EXAMINER
DANG, DUY M

ART UNIT	PAPER NUMBER
2624	

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/976,040	LEE, HENRY C.
	Examiner	Art Unit	
	Duy M. Dang	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

    4a) Of the above claim(s) *16-21 and 23* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 4* is/are rejected.

7)☐ Claim(s) *2-3, 5-15, and 22* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1.   Applicant's election with traverse of Invention of Group I, Claims 1-15 and 22 in the

reply filed on November 04, 2005 is acknowledged. The traversal is on the ground(s) that is set

forth in page 1 last paragraph to page 2 first paragraph. This is not found persuasive because the

restriction was based on the their different classification which require a different field of search.

For example, the field of search for Invention of Group I, class 382 subclass 173 is to search

class 382 and subclasses 164 and 171 whereas the field of search for Invention of Group II, class

382 subclass 284 does not require to search class 382 subclass 164, 171 or 173 according to

Manual of Classification. Therefore, search for both Inventions of Group I-II are not the same.

Because of the different search requirement for each Invention, different examination would be

required for each Invention. Therefore, it would create a serious burden to examine the

application. That is a burden on the Examiner. Furthermore, both Inventions of Groups I-II are

distinct from each other because the utility such as image segmentation in Invention of Group I is

not required in the Invention of Group II. Also, the utility such as labeling and combining in

Invention of Group II is not required in the Invention of I. One Invention is not deemed obvious

over the other Invention. Generally speaking, one invention is entitled per one application.

        The requirement is still deemed proper and is therefore made FINAL.

2.   Claims 16-21 and 23 are withdrawn from further consideration pursuant to 37 CFR

1.142(b), as being drawn to a nonelected Invention of Group II, there being no allowable generic

or linking claim. Applicant timely traversed the restriction (election) requirement in the reply

filed on November 04, 2005. See 37 CFR 1.142(b) and MPEP § 821.03.

3.   This application contains claims 16-21 and 23 drawn to an invention nonelected with

traverse filed on November 04, 2005.   A complete reply to the final rejection must include

cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP

§ 821.01.

Response to Arguments

4.   Applicant's arguments filed on June 23, 2006 have been fully considered but they are not

persuasive.

It is noted that Applicant's argument with regard to the rejection of claims 1 and 4 is

based on the ground that of "Hamza publication fails to relate the probability of an object being

detected in a window to the overlapping manner in which the windows are positioned." (see last

line of page 2 to first four lines of page 3).   In response to Applicant's argument that the

references fail to show certain features of applicant's invention, it is noted that the features upon

which applicant relies are not recited in the rejected claim(s). Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the

claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant is reminded that the examiner is entitled to give the broadest reasonable

interpretation to the language of the claims. The examiner is not limited to applicant's definition

which is not specifically set forth in the claims. See *In re* Tanaka et al., 193 USPQ, (CCPA)

1977; Behr v. Talbott, 27 USPQ 1404 (BPAI expanded panel on recon 1992); *In re* Zletz, 13

USPQ2d 1320 (CAFC 1989).

In this case, Hamza does teach the claimed invention as recited in claims 1 and 4. For

example, Hamza teaches: receiving image data (image capture device 12 of figure 2);

segmenting the image data into multiple windows (i.e., *"each capture of the monitored area is*

divided up into portions or segments. These portions or segments are referred to as mask

windows" disclosed in paragraph [0018] in column 2); determining a likehood that each window

contains the object and probability rank ordering the multiple windows based on the step of

determining (i.e., *"detect objects smaller than the mask window"* disclosed in column 2

paragraph [0018] lines 7-8. Also refer to paragraphs [0024] to [0040] in column 3. Specifically,

the *"an object is detected when the difference in expected value is less than some threshold T"*

disclosed in paragraphs [0038] to [0040] corresponds to the so called *"determining a likehood*

that each window contains the object." Furthermore, it is noted that the value of the threshold T

is within the range (rank) from zero (0) to gamma sub ref show in paragraph [0040] refers to

claimed "probability rank ordering because: most likehood window which contains object to be

detected has a difference in expect value less than threshold T; and the less likehood window

which contains object to be detected has a difference in expect value more than threshold T); and

selecting a predetermined one of the multiple windows as a window wherein the object image is

considered to reside (this claimed feature is inherently included in Hamza's disclosed figure 4 in

order to update the reference image. In addition, this claimed feature is also inherently included

in Hamza in order to (a)indicate the object is detected in the monitored area as disclosed in

paragraph [0018] in column 2, and (b)detect intrusion of people in the field of monitor system as

disclosed in column 2 paragraph [0012]).

Claim Rejections - 35 USC § 102

5.   The text of those sections of Title 35, U.S. Code not included in this action can be found

in a prior Office action.

6.   Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Hamza et al.

(US Publication No. 2004/0146184. Refer as Hamza).

The advanced statements with regard to claims 1 and 4 as set forth in the preceding

paragraph 4 are incorporated herein.

The rejection of claims 1 and 4 under section 35 U.S.C. §102(e) set forth in paragraph 3

of the previous Office action mailed on January 23, 2006 are incorporated herein.

Allowable Subject Matter

7.   Claims 2-3, 5-15, and 22 are objected to as being dependent upon a rejected base claim,

but would be allowable if rewritten in independent form including all of the limitations of the

base claim and any intervening claims.

Conclusion

8.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

9.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Duy M. Dang whose telephone number is 571-272-7389. The
examiner can normally be reached on Monday to Friday from 6:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Matthew C. Bella can be reached on 571-272-7778. The fax phone number for the
organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent
Application Information Retrieval (PAIR) system. Status information for published applications
may be obtained from either Private PAIR or Public PAIR. Status information for unpublished
applications is available through Private PAIR only. For more information about the PAIR
system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR
system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would
like assistance from a USPTO Customer Service Representative or access to the automated
information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dmd
09/06

DUY M. DANG
PRIMARY EXAMINER